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E-Filed 2-25-12

10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re:

13 JOHN E. HARNEY, IV. and AIMEE M.
14 HARNEY,

15 **Debtors.**

16 Case No. BK-S-11-10391-BAM
17 Chapter 11

18 Date: February 28, 2012
19 Time: 9:00 a.m.

20 **OPPOSITION TO CONFIRMATION OF FIRST AMENDED PLAN**

21 Martin Keough ("Keough"), by and through his counsel of record Ty E. Kehoe, Esq.,
22 hereby files this Opposition to Confirmation of First Amended Plan.

23 This Pleading is based upon the Points and Authorities attached hereto, the papers and
24 pleadings on file in this action and any oral testimony and evidence to be presented at the time
25 of the hearing, and the Opposition to Plan Confirmation filed herein on November 1, 2011
26 which is fully incorporated herein.

27 Dated this 25th day of February, 2012.

KEHOE & ASSOCIATES



28 Ty E. Kehoe, Esq.

29 **SUMMARY OF ISSUES**

30 1 – Debtor filed bankruptcy on January 11, 2011, and has enjoyed the benefit of the automatic
31 stay since that time, while essentially paying none of his creditors.

1 2 – Keough opposed Debtor's Original Plan on November 1, 2011, and Debtor has failed to
 2 ever respond to a single point raised in that Opposition, either formally through a pleading, or
 3 informally through a letter. A couple of limited and short telephone calls have only tangentially
 4 addressed some of the issues.
 5

6 3 – Debtor filed the First Amended Plan herein earlier today, on February 25, 2012, only one
 7 business day before the date set for plan confirmation.
 8

9 4 – The last month for which Debtor has filed an operating report is November 2011.
 10

11 5 – Debtor's November operating report "Summary of Financial Status" "Cash Balance End of
 12 Month" indicates a cumulative cash balance of \$10,337. However, the two bank statements
 13 attached to the operating report indicate that one bank account has \$1,511.81, and one has
 \$1,408.00. Keough is unclear where the remaining \$7,000 is located.¹
 14

15 6 – Debtor's November operating report evidences ATM withdrawals totaling approximately
 \$800. There is no explanation provided for the use of this cash in November.
 16

17 7 – Debtor's November operating report evidences hotel stays in American Fork, UT, Cedar
 City UT, and appears to show a purchase at a movie theater in Chicago, IL. Keough is unaware
 18 of how these trips could be work related, and suggests that such trips might not be appropriate
 19 while Debtor has been in bankruptcy for thirteen months not paying creditors.
 20

21 8 – Debtor's November operating report evidences a single purchase at In-N-Out Burger
 totaling \$84.97. This amount seems extravagant for a family of 4, including two little ones,
 22 while in bankruptcy for thirteen months not paying creditors.
 23

24
 25
 26
 27

28 1 It is believed that Debtor has not made any of his mortgage payments, on either his primary residence, or his
 investment property, during the bankruptcy, and yet he still has only about \$3,000 excess funds in the bank.

1 9 – Debtor has collected \$1,000 per month from tenants in their investment property during this
 2 bankruptcy, while never providing a penny to Keough who holds the first and only mortgage on
 3 the investment property, and who has not been paid a penny since February 2009.
 4

5 10 – In spite of Debtor collecting the rents from the tenants, Debtor has failed to pay the real
 6 property taxes on the investment property.
 7

8 11 – In spite of Debtor collecting the rents from the tenants, upon information and belief,
 9 Debtor has permitted the insurance on the investment property to lapse.
 10

11 12 – Debtor has transferred \$500 from the tenant's rents to the co-owner of the investment
 12 property. This has been done throughout the bankruptcy, without first paying the expenses of
 13 the investment property, and upon information and belief without court permission. It is
 14 unknown whether such splitting of tenant's rents occurred prior to the bankruptcy, or whether
 15 there is any contractual basis between the co-owners for such action. The co-owner of the
 16 investment property is also not paying Keough.
 17

18 13 – Debtor's First Amended Plan proposes no distribution to Keough for Keough's unsecured
 19 claim which totals approximately \$170,000 pursuant to Debtor's bankruptcy filings.
 20

21 14 – Debtor's First Amended Plan specifically does not bind John Barrier, the co-owner of the
 22 investment property, even though Barrier is listed as a co-debtor in the bankruptcy.
 23

24 15 – Debtor's First Amended Plan does not address repayment of the rental income collected
 25 from the investment property during the course of the bankruptcy.
 26

27 16 – Debtor's First Amended Plan does not address payment of the real property taxes which
 28 are unpaid on the investment property.²
 29

CONCLUSION

For all of the above reasons, along with the reasons included in Keough's November 1, 2011 Objection to Plan Confirmation, Keough objects to confirmation of Debtor's First Amended Plan.

Dated this 25th day of February, 2012.

KEHOE & ASSOCIATES

3 Keho

Ty E. Kehoe, Esq.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of February, 2012, I served a true and correct copy of the Opposition to Confirmation of First Amended Plan electronically to the following:

David A. Riggi, Esq. Via Electronic Notice Counsel for Debtor	US Trustee – LV – 11 Via Electronic Notice	Kevin Hahn Via Electronic Notice Counsel for JPMorgan Chase Bank, N.A.
Christopher M. Hunter Via Electronic Notice Counsel for Federal National Mortgage Assoc.		

Ty E. Kehoe, Esq.